

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

EXTREME NETWORKS, INC.,

ORDER

Plaintiff,

07-cv-229-bbc

v.

ENTERASYS NETWORKS, INC.,

Defendant.

Two days before trial was scheduled to begin, defendant filed a motion to dismiss its invalidity counterclaims *without prejudice*. Defendant admits that the only reason it is seeking to dismiss the counterclaims is that I concluded that its expert on invalidity could not testify because she had failed to demonstrate in her expert report that she was qualified and because her opinions were too conclusory. After forcing plaintiff to prepare for trial on the invalidity counterclaims, defendant may not escape the effect of an adverse ruling by cutting its losses and hoping to fight another day. It must either agree to dismiss its counterclaims with prejudice or make the best of what it has. Accordingly, IT IS ORDERED that defendant's motion to dismiss, dkt. #351, is DENIED as is its request in the alternative to bifurcate the trial into an infringement and invalidity phases of the trial. I will reserve a ruling on attorney

fees and costs.

Entered this 21st day of May, 2008.

BY THE COURT:

Barbara B. Crabb
BARBARA B. CRABB
District Judge